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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

Opinion No. 35/2017 concerning Mohammed Shaikh Ould Mohammed Ould Mkhaitir (Mauritania)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 20 January 2017 the Working Group transmitted to the Government of Mauritania a communication concerning Mohammed Shaikh Ould Mohammed Ould Mkhaitir. The Government replied to the communication on 17 March 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

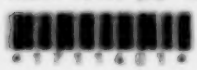
(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation,



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disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mohammed Shaikh Ould Mohammed Ould Mkhaitir is a 31-year-old blogger and anti-slavery activist of Mauritanian nationality. He was arrested on 2 January 2014.

Context

5. According to the source, Mauritanian society remains divided according to an ethnic-based caste system. The source alleges that the anti-slavery laws adopted in Mauritania are not enforced and that the Government suppresses abolitionist speech and protests. The source maintains that Mauritanian slave-owners use a special interpretation of Islam to justify continuing the practice.

6. The source notes that, although freedom of expression, freedom of opinion and freedom of thought are enshrined in the Constitution, their enjoyment is highly restricted in practice. The Constitution does not include any guarantees for freedom of religion. Article 306 of the Criminal Code penalizes, inter alia, acts against Islamic morals and decency, apostasy and hypocrisy. According to the source, this provision is used by the Government to restrict the exercise of the individual freedoms of expression, opinion, thought and religion, which are protected under international conventions and treaties ratified by Mauritania. The source considers that the Mauritanian courts lack independence and notes that detention conditions are notoriously harsh.

Arrest and detention

7. In December 2013, Mr. Mkhaitir published an article called "*Religion, religiosité et forgerons*" ("Religion, religiosity and blacksmiths") on an online news site. The article criticized the use of religion to justify slavery. Some Mauritanians were shocked by the article's analysis of the early history of Islam. On 2 January 2014, Mr. Mkhaitir was arrested and accused of the following capital offences: apostasy and insulting the Prophet Muhammad, under title II, section IV, article 306 of the Criminal Code. When Mr. Mkhaitir learned that the authorities were looking for him, he voluntarily turned himself in. After his arrest, the public continued to protest against his article. The President himself allegedly joined the protesters, stating that he stood with them against Mr. Mkhaitir.

8. According to the source, Mr. Mkhaitir was questioned on numerous occasions while in police custody. During one of the interrogations, he allegedly expressed remorse for his article. The interrogation was recorded, but the police later claimed that the recording had been lost. On 11 January 2014, Mr. Mkhaitir published a written statement from prison in which he once again expressed remorse for his article and clarified his intentions in writing it. Despite his statement and expression of remorse, the public remained incensed by the article and protests continued.

9. On 23 December 2014, after nearly a year in custody, Mr. Mkhaitir was brought before the criminal court of Dakhlet Nouadhibou. The source states that Mr. Mkhaitir was heard by a panel of five judges, two of whom were allegedly specially chosen by the Ministry of Justice and lacked impartiality and independence. Although the content of Mr. Mkhaitir's article was the basis of the charges against him, the court apparently refused to discuss it at trial. Consequently, the defence focused on the fact that Mr. Mkhaitir had expressed remorse and should be pardoned under article 306 of the Criminal Code. At the end of the trial, Mr. Mkhaitir once again expressed remorse before the court.

10. On 24 December 2014, the court found Mr. Mkhaitir guilty of hypocrisy and insulting the Prophet Muhammad. He was sentenced to execution by firing squad. The source notes that the court refused to admit Mr. Mkhaitir's expression of remorse and found him guilty of hypocrisy, an offence with which he had never been charged. Under article 306 of the Criminal Code, if the defendant expresses remorse, the maximum penalty for apostasy is two years' imprisonment. However, expressing remorse has no mitigating effect

if the charge is hypocrisy. In its decision, the court based itself on what it considered to be historical inaccuracies in the article, which it saw as evidence of a lack of sincerity in Mr. Mkhaitir's expression of remorse.

11. According to the source, Mr. Mkhaitir and his lawyers did not know until the verdict came down that the court was ruling on the offence of hypocrisy. Mr. Mkhaitir's lawyers had focused their defence on his expression of remorse because their client was being tried for apostasy. They were therefore shocked to find out that Mr. Mkhaitir had been sentenced to death for a different offence.

12. Mr. Mkhaitir appealed his conviction before the appeal court of Nouadhibou. On 21 April 2016, the appeal court upheld the conviction but stated that the case should have been categorized as an offence of apostasy rather than hypocrisy. The appeal court referred the case to the Supreme Court for consideration of the sincerity of Mr. Mkhaitir's expression of remorse.

13. The case was heard by the Supreme Court on 15 November 2016. A few days before the hearing, the Forum of Imams and Ulemas issued a fatwa against Mr. Mkhaitir, calling on the Supreme Court to uphold his death sentence. According to the source, during the hearing, the Supreme Court was surrounded by an angry crowd calling for his death sentence to be upheld; a number of the protesters were armed. The crowd became so threatening that Mr. Mkhaitir's lawyers had to wait in the courtroom until the protesters left. As a result of all the pressure, the Supreme Court decided to postpone its verdict to 20 December 2016, and then again to 31 January 2017.

14. The source believes that Mr. Mkhaitir's detention constitutes arbitrary deprivation of liberty under categories II and III.

Category II

15. According to the source, Mr. Mkhaitir's detention is arbitrary under category II because he was arrested, detained and convicted for exercising his freedoms of opinion and expression. These freedoms are protected under article 19 of the Universal Declaration of Human Rights, article 19 (2) of the International Covenant on Civil and Political Rights and article 9 of the African Charter on Human and Peoples' Rights and can be restricted only when necessary to respect the rights or reputations of others or to protect national security, public order or public health or morals (one of the purposes listed). The source notes that the authorized restrictions are extremely narrow and do not apply in this case because the restriction of Mr. Mkhaitir's freedom of expression was not necessary to protect one of the purposes listed. Political statements, discussions on human rights and religious speech are all protected, and the scope of protection under international law even includes statements that could be considered offensive or inaccurate.

16. The source notes that the Government detained Mr. Mkhaitir on the grounds of the views he expressed in his abolitionist article. Yet the source believes that the article clearly falls within the scope of protection of freedom of expression as set out in the Universal Declaration of Human Rights, the Covenant and the Charter, because it can be described as both political and religious. Moreover, the article did not advocate violence and did not, therefore, constitute a threat to the rights or reputations of others, national security, public order or public health or morals.

17. The source is of the opinion that Mr. Mkhaitir's detention is also arbitrary under category II insofar as the law under which he was convicted clearly breaches the safeguards provided for in international law in respect of freedom of religion. Article 18 of the Universal Declaration of Human Rights, article 18 of the Covenant and article 8 of the Charter protect the right of every person to freedom of thought, conscience and religion. In addition, the source points out that the Human Rights Committee and the Special Rapporteur on freedom of religion or belief have recommended that Mauritania abolish the offence of apostasy. However, article 306 of the Criminal Code prohibits persons from expressing views that the Government considers as contrary to Islam. According to the source, the criminalization of thought on the sole basis of the individual religious beliefs or statements that the Government considers offensive constitutes a blatant violation of freedom of religion as guaranteed by the Universal Declaration of Human Rights, the

Covenant and the Charter. Furthermore, the few authorized limitations on freedom of religion listed in article 18 (3) of the Covenant do not apply to Mr. Mkhaitir because the limitations must be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. These limitations are interpreted in a restrictive manner and may not be based on principles stemming from a single religion as was done in this case.

Category III

18. According to the source, Mr. Mkhaitir's detention is also arbitrary under category III because the Government denied him the right to a fair trial.

19. The source is of the view that the Government denied Mr. Mkhaitir the right to be tried by an independent and impartial tribunal, the right to equality before the courts and the right to be presumed innocent, in violation of articles 7, 10 and 11 (1) of the Universal Declaration of Human Rights, article 14 (1) and (2) of the Covenant, and articles 3 and 7 (1) (b) and (d) of the Charter. The lack of an independent and impartial tribunal is demonstrated by the fact that: two of the judges were appointed by the executive branch; the court banned discussion of the content of the article during the trial; the court ignored Mr. Mkhaitir's repeated expressions of remorse and denied him the possibility to express remorse after his conviction, as was his right under the law; the court permitted a hostile crowd to harass Mr. Mkhaitir and his lawyers before and during the trial; and the investigative authorities refused to transmit a key piece of evidence, namely Mr. Mkhaitir's first expression of remorse. According to the source, Mr. Mkhaitir's inequality before the courts was demonstrated by his unfair treatment by the court, in particular its refusal to address his expression of remorse in keeping with the law. The source notes that this treatment, along with the President's statements prior to the trial that he was on the side of anti-Mkhaitir protesters and that Mr. Mkhaitir would be punished, show that Mr. Mkhaitir was presumed to be guilty.

20. Furthermore, the source contends that, by finding Mr. Mkhaitir guilty of an offence other than the one he was charged with, the authorities denied Mr. Mkhaitir the right to be informed of the charges against him and of the right to prepare a defence, in violation of article 10 of the Universal Declaration of Human Rights, article 14 (3) (a) of the Covenant, and article 7 (1) (c) of the Charter. The source considers that if Mr. Mkhaitir had known that he stood accused of hypocrisy rather than apostasy, he would have been able to mount an appropriate defence with his lawyers. The appeal court itself stated that the charge should have been apostasy rather than hypocrisy, thereby confirming that the lower court had made a mistake by changing the charge from apostasy to hypocrisy part-way through the trial. The source notes that the court's ban on bringing up the content of the article during the trial and the fact that it permitted an unruly anti-Mkhaitir crowd inside the courtroom also prevented Mr. Mkhaitir from mounting a proper defence.

21. Lastly, the source notes that Mauritania failed to grant Mr. Mkhaitir the right to be released pending trial or the right to be tried within a reasonable time, in violation of article 9 of the Universal Declaration of Human Rights, articles 9 (3) and (4) and 14 (3) (c) of the Covenant, and articles 6 and 7 (1) (d) of the Charter. Following his arrest in January 2014, Mr. Mkhaitir was not promptly brought before a judge or justice official for a ruling on the legality of his arrest and detention or on his release pending trial. On the contrary, he was held in pretrial detention for nearly a year until his trial at the end of December 2014. The source contends that the fact that Mr. Mkhaitir was not brought before a justice official or released pending trial constitutes a violation of his rights under article 9 (3) and (4) of the Covenant. Furthermore, the fact that Mr. Mkhaitir had to wait a year for his trial — an unreasonable period under any circumstance and the more so when the defendant is in pretrial detention — violated his right to a trial within a reasonable time as provided for in article 9 of the Universal Declaration of Human Rights, article 14 (3) (c) of the Covenant, and articles 6 and 7 (1) (d) of the Charter.

Response from the Government

22. On 29 January 2017, the Working Group transmitted the source's allegations to the Government of Mauritania under its regular communication procedure. The Working

Group requested the Government to provide, by 20 March 2017, more detailed information on Mr. Mkhaitir's situation since his arrest, including any comments it wished to make regarding the allegations in the communication. The Working Group also requested the Government to clarify the facts and legal provisions on which Mr. Mkhaitir's deprivation of liberty is based and explain how they comply with the obligations of Mauritania under international human rights law, in particular the treaties ratified by Mauritania. The Government submitted its reply on 17 March 2017 in both Arabic and French.

23. In its reply, the Government begins by recalling the principles and guarantees enshrined in the Constitution and Mauritanian law with regard to the freedoms in question, including the rights of defendants in criminal proceedings. The Government contends that the legal provisions in place protect against arbitrary detention and guarantee the presumption of innocence and the right to a fair trial by an independent and impartial court. The Government further recalls that Mauritania is an Islamic republic and that the Mauritanian people is attached to the precepts and values of Islam, which extol freedom, equality and justice for all without distinction or restriction other than that prescribed by law.

24. The Government then summarizes the Mkhaitir case, confirming most of the facts and proceedings reported by the source. The Government claims that the numerous requests for release and other applications submitted by the defence delayed the transfer of the file to the criminal court until 5 May 2014, "just before the judicial hiatus". The Government reports that the criminal court held the hearing on 23 December 2014 and rendered its judgment on the following day. The court found Mr. Mkhaitir guilty of blasphemy towards the Prophet Muhammad and hypocrisy (instead of apostasy), after the acts had been recategorized. Mr. Mkhaitir was sentenced to death. The appeal court of Nouadhibou found him guilty of apostasy and sentenced him to death, but referred the matter of his expression of remorse to the Supreme Court for an assessment of its sincerity. On the basis of the appeal in cassation, the Supreme Court overturned the court's judgment and sent the case back to a different panel of the appeal court.

25. The Government maintains that Mr. Mkhaitir received a fair trial by an independent and impartial court, before which he had the assistance of professional lawyers and was allowed to freely present his defence. The Government further maintains that Mr. Mkhaitir was tried by the same criminal court that tries all other persons accused of a crime, and which consists of a presiding judge and two co-judges, all of whom are professional judicial officials, assisted by two jurors appointed by the president of the competent appeal court on the advice of the public prosecutor at that court. The Government contests the source's allegation that the Ministry of Justice was involved in deciding the composition of the criminal court.

26. The Government also contests the allegation that the court refused to address the article that formed the basis of the charges against Mr. Mkhaitir at the trial. According to the Government, two of the judgment's 20 pages were dedicated to presenting the article and another 14 pages to a discussion of the article.

27. Regarding the recategorization of the offence of apostasy as one of hypocrisy, the Government contends that the court did not change the acts of which Mr. Mkhaitir stood accused but merely used its sovereign power of assessment to recategorize them.

28. Regarding the fatwa issued by the Forum of Imams and Ulemas and the hostile protesters' calls for the court to uphold Mr. Mkhaitir's death sentence, the Government maintains that the "the ulemas' exercise of their right to issue fatwas and the public's exercise of its right to protest in no way influenced the decision of the Supreme Court, which ruled freely and sovereignly and, incidentally, against the fatwa and the protesters' calls".

29. The Government denies the source's claim that Mr. Mkhaitir's detention was arbitrary under category II. It contends that Mr. Mkhaitir was not held or convicted for exercising his freedoms of expression and opinion but for exercising those freedoms outside the framework of the law. According to the Government, Mr. Mkhaitir's article attacked the values and sacred principles of Islam, "the religion of the State and of the people". In addition, the Government recalls that the State entered a reservation to article

18 of the Covenant and argues that, consequently, Mr. Mkhaitir's freedom of religion was not violated.

30. Lastly, the Government challenges the source's claims regarding category III. It states that, during his trial, Mr. Mkhaitir enjoyed every safeguard related to the right to be tried fairly by an independent and impartial court, to freely present his defence and to introduce any apposite motion or application to protect his rights.

Additional comments from the source

31. The Government's reply was transmitted to the source on 23 March 2017. In its response, the source clarifies some of the elements of its argument in the light of the Government's reply and submits additional arguments on points of law to strengthen its initial legal analysis.

Discussion

32. To begin with, the Working Group recalls that, on 28 November 2016, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur in the field of cultural rights and the Special Rapporteur on freedom of religion or belief transmitted an urgent appeal to the Government of Mauritania in which they expressed their serious concerns about the case of Mr. Mkhaitir.[1] Although the Government unfortunately did not reply to the urgent appeal, the Working Group would like to thank Mauritania for its exemplary cooperation in the present procedure.

33. The parties to the case do not appear to dispute the facts on the whole. They agree that Mr. Mkhaitir turned himself in to the police on 2 January 2014 after learning that he was wanted in connection with an article published in December 2013. He was accused of apostasy and insulting the Prophet Muhammad. He allegedly expressed remorse during interrogation and subsequently, from his cell, published a piece to clarify the initial article and once again express his remorse. The trial was held on 23 December 2014 before a panel of five judges, who convicted him of hypocrisy and insulting the Prophet Muhammad and sentenced him to death – a first, according to the source, following years of a de facto moratorium on capital punishment. The appeal court of Nouadhibou upheld the conviction on 21 April 2016, while noting that the panel should have tried him for the offence of apostasy, but referred the case to the Supreme Court for its assessment of the sincerity of the expression of remorse. In response to the appeal, the Supreme Court sent the case back to a different panel of the appeal court on 31 January 2017.

34. Thus, the main area of contention is the labelling of the detention as arbitrary under categories II and III. The Working Group will, therefore, consider the facts from these two perspectives.

35. Regarding category II, the source alleges that the Constitution of Mauritania does not guarantee freedom of religion and that domestic law breaches freedom of religion as protected under article 18 of the Universal Declaration of Human Rights, article 18 of the Covenant and article 8 of the Charter. The Government maintains that its reservation to article 18 of the Covenant ensures the primacy of Islamic law and that, accordingly, the source's argument does not hold. In addition, the source contends that freedom of expression and freedom of opinion are protected under article 19 of the Covenant and can be restricted only in a limited manner (see para. 15 above). The Government is of the view that these freedoms can be exercised only within the framework of the law.

36. Both parties agree that Mr. Mkhaitir's case is a matter of freedom of opinion and freedom of expression as applied to religious issues. It is the Working Group's task to determine whether, in the present case, the restrictions stemming from Mauritanian criminal law are in line with international law. In order to do this, it is important to assess the validity of the State's reservation to article 18 of the Covenant.

[1] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22854.

37. A reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" (Vienna Convention on the Law of Treaties, art. 2). Articles 19 to 23 of the Vienna Convention lay down the legal framework for reservations.[2] The reservation entered by Mauritania to article 18 of the Covenant appears to allow the primacy of Islamic law.[3]

38. However, the Human Rights Committee addressed the reservation in its concluding observations of 30 October 2013 (see CCPR/C/MRT/CO/1, para. 6) as follows:

> The Committee notes the concerns that the reference in the preamble to the State party's Constitution to Islam as the only source of law could lead to legislative provisions that prevent the full enjoyment of some rights provided for in the Covenant. The Committee notes with concern that the State party has entered a reservation to article 18, although the Covenant provides that there may be no derogation from that article to article 23, paragraph 4, of the Covenant and regrets the State party's position that it will maintain them (arts. 2, 18 and 23).
>
> The State party should ensure that the reference to Islam does not prevent the full application of the Covenant in its legal order and does not serve to justify the State party not implementing its obligations under the Covenant. The Committee therefore encourages the State party to consider withdrawing its reservations to article 18 and article 23, paragraph 4, of the Covenant.

39. In the light of the Human Rights Committee's concluding observations, the Working Group concludes that the Government's argument regarding the reservation to article 18 of the Covenant does not stand. Moreover, the Working Group recalls that the obligation of Mauritania to respect Mr. Mkhaitir's freedom of conscience and religion also derives from article 8 of the Charter (to which no reservation was entered) and article 18 of the Universal Declaration of Human Rights.

40. Given the above, and in order to assess the restriction imposed by Mauritanian criminal law, it is necessary to refer to the Human Rights Committee's interpretation of article 18 of the Covenant. It transpires from its general comment No. 22 (1993), on the right to freedom of thought, conscience and religion, that as a consequence of freedom of religion, in conjunction with freedom of thought and belief (art. 18), and of freedom of expression (art. 19), everyone may express their opinion in public or private, even on matters of religion. This is precisely what happened in Mr. Mkhaitir's case.

41. Moreover, the very essence of Mr. Mkhaitir's reasoning was that a social group should not be enslaved or viewed as inferior on the basis of religion. The expression of such reasoning may not in any way be restricted under article 18 of the Covenant.

42. In addition, in respect of the offence of apostasy, it is worth recalling paragraph 21 of the Human Rights Committee's concluding observations (CCPR/C/MRT/CO/1):

> While noting that Islam is the State religion in Mauritania, the Committee is concerned that exercise of the freedom of conscience and religion is not formally guaranteed for Muslim Mauritanians, for whom a change of religion is classified as apostasy and is punishable by the death penalty (arts. 2, 6 and 18).
>
> The State party should remove the crime of apostasy from its legislation and authorize Mauritanians to fully enjoy their freedom of religion, including by changing religion.

43. The Working Group is of the view that Mr. Mkhaitir's arrest and detention were the consequence of the exercise of his freedom of opinion and expression as protected under

[2] This is a codification convention. Although Mauritania has not ratified the Vienna Convention, its provisions apply to it under international customary law.

[3] The reservation (see http://treaties.un.org) reads as follows: "The Mauritanian Government, while accepting the provisions set out in article 18 concerning freedom of thought, conscience and religion, declares that their application shall be without prejudice to the Islamic sharia."

articles 18 and 19 of the Covenant. Therefore, his deprivation of liberty was arbitrary under category II. Under these circumstances, Mr. Mkhaitir's trial should not have taken place. However, since the trial has already taken place, the Working Group will consider the arguments regarding the trial as they pertain to category III.

44. In this regard, the source maintains that: the Mauritanian justice system is not independent; two of the five judges on the panel were specially appointed by the Ministry of Justice; the panel refused to discuss the content of the article in question and recategorized the offence in its judgment on the merits, without giving the accused the opportunity to defend himself against the new charge; and the trial and appellate judges refused to admit the expression of remorse. The source adds that the President's statement condemning Mr. Mkhaitir, the public protests in favour of his death sentence and the fatwa supporting the death penalty all influenced the judges, including those of the Supreme Court, while undermining the principle of equality before the courts. Lastly, the source contends that denying Mr. Mkhaitir's release pending trial also infringed his rights.

45. The Government refutes all these allegations but does not deny that the President stated before the opening of the trial that he was on the side of the protesters and that Mr. Mkhaitir would be punished. The Government recalls that the President is the guarantor of judicial independence.

46. The Working Group has already expressed its views regarding the President's public statements on a criminal case in a previous case concerning Mauritania (see opinion No. 36/2016, para. 34). The Working Group is of the view that the President's statement regarding Mr. Mkhaitir, which the Government does not deny, was inappropriate. The statement weakens both the perceived independence of the justice system, despite the President being its guarantor, and the perceived impartiality of criminal proceedings. The statement also violates the presumption of innocence, as pointed out by the Human Rights Committee in its general comment No. 32 (para. 30): "It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused." This violation alone is sufficiently serious to have definitively undermined the fairness of the trial, thereby rendering Mr. Mkhaitir's detention arbitrary under category III.

47. The Government maintains that Mr. Mkhaitir's repeated applications for release prevented the case from being transferred rapidly to the court for judgment on the merits. Yet, according to the Government itself, the case was transferred on 5 May 2014 but the trial did not open until 23 December 2014. It is not clear whether the Government is blaming the defence for the four-month delay before the transfer to the criminal court or the delay of more over six months between the transfer and the opening of the trial. Whatever the case may be, the Working Group considers that the argument put forward by Government does not satisfactorily explain the total delay, i.e. 11 months between the arrest and the opening of the trial. In any case, Mr. Mkhaitir had the right to apply for release by challenging the grounds for his pretrial detention. The source points out that judges have a duty to render their decision on such applications within 72 hours, but that in this case the president of the court did not rule on the application for release submitted on 6 May 2014 until 6 August 2014.

48. As to the source's arguments regarding the alleged lack of independence of the panel of judges, the Working Group takes note of the Government's reply and regrets the general nature of the source's allegations. Under the circumstances, the Working Group cannot take these allegations into consideration.

49. Regarding the protests at the Supreme Court hearing, the Working Group recalls that the right to peaceful assembly is protected under international law. In this case, the source maintains that some of the protesters were armed, which the Government has not denied. However, the Working Group does not have enough information to determine whether or not the assembly was peaceful. When jurors who are not professional judges are involved in a trial, protests against the defendant can influence their judgment and, by extension, the impartiality of the proceedings. Nevertheless, in this case, the parties' arguments are not specific enough for the Working Group to take a position in this regard.

50. More generally, the Working Group remains concerned about the whole issue of detention in Mauritania. It would be happy to conduct a follow-up visit to the country in order to engage in a constructive dialogue with the Government on the process of legal reform, on which the Government appears to have already made a start.

Disposition

51. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mohammed Shaikh Ould Mohammed Ould Mkhaitir, being in contravention of articles 18 and 19 of the Universal Declaration of Human Rights and of articles 14 (3), 18 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II and III.

52. The Working Group requests the Government of Mauritania to take the steps necessary to remedy the situation of Mohammed Shaikh Ould Mohammed Ould Mkhaitir without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

53. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mohammed Shaikh Ould Mohammed Ould Mkhaitir immediately and accord him an enforceable right to compensation and other reparations, including guarantees of non-repetition, in accordance with international law.

Follow-up procedure

54. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Mkhaitir has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Mkhaitir;

(c) Whether an investigation has been conducted into the violation of Mr. Mkhaitir's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Mauritania with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

55. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

56. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

57. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[4]

[*Adopted on 27 April 2017*]

[4] See Human Rights Council resolution 33/30, paras. 3 and 7.